IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Bhagwana Ram and another

Vs.

Rajasthan State Road Transport Corporation and others

S.B.CIVIL MISC. APPEAL NO.546/1994

Against the award dated 03.06.1994 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.24/1992.

Date of Judgment : 12.12.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Roshan Lal for the appellants
Mr. Sangeet Lodha with Mr.Arjun Singh for the respondents Nos.1 & 2
Mr.Bharat Shrimali for the respondent No.3

BY THE COURT:

This is claimants' appeal against the award dated 03.06.1994 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.24/1992 whereby the claim application submitted by the appellants has been rejected with the finding that the deceased Deepa Ram, son of appellants, met with his untimely end for his own negligence in attempting

to board a moving bus of the respondent-Rajasthan State Road Transport Corporation (RSRTC).

Brief facts relevant for determination of the questions involved in the present appeal are that the claimants-appellants Bhagwana Ram and Smt.Chanani stating their age at 50 and 48 years respectively submitted the claim application aforesaid with the averments that their son Deepa Ram (26½ years in age) was working as a teacher with the Education Department at Dudiyon-ki-Dhani (Rawatsar) School earning salary income of Rs.1,903/- per month. Narrating the incident, the claimants alleged that on 03.11.1991, Deepa Ram while boarding a bus bearing registration No.RJ 14/ 1166 at Tilak Bus Stand, Barmer was crushed beneath its tyre and sustained grievous injuries; he was admitted to the hospital but succumbed to the injuries. Stating liability of the non-applicants RSRTC, its Depot Manager and Shobh Singh, respectively the owners and driver of the offending bus, the claimants made a claim of Rs.12,12,083/- for pecuniary and non-pecuniary losses. The non-applicants in their reply submitted that accident did not occur for any negligent driving of the bus; that while the driver was taking the vehicle in reverse for parking at its specified place at the bus stand, the deceased, in order to secure his seat, attempted to enter the vehicle from its left hand side climbing upon the tyre; that the

deceased slipped in such attempt and sustained injures for his own negligence; and that the deceased met with his end because of deficiency in treatment. On the pleadings of the parties, following issues were framed by the Tribunal:

> "1. आया दिनांक 3.11.91 को दिन को 3 बजे बाड़मेर तिलक बस स्टेण्ड पर विप्रार्थी सं. 3 ने बस आर जे 4/1166 को तेज गति व लापरवाही से चलाया जिससे दीपाराम की मृत्यु हो गयी।
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> 2. आया विप्रार्थी सं. 3 वाहन चालक विप्रार्थी सं. 1 व 2 के नियोजन में चालक के पद पर कार्यरत था और नियोजन काल में ही उक्त दुर्घटना घटित हुई ?
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> 3. आया प्रार्थीगण विप्रार्थीगण से क्लेम के पेरा नं. 23 में वर्णितानुसार 12,12,083 रूपये मुआवजा राशि प्राप्त करने के अधिकारी हैं।
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> 4. सहायता।"

In evidence, the claimant Bhagwana Ram was examined as AW-1 and Khema Ram, a cousin of the deceased and said to be an eyewitness to the incident was examined as AW-2. Non-applicants examined the bus driver Shob Singh as NAW-1, Depot Incharge Hadwanta Ram Choudhary as NAW-2 and another bus driver Gopi Kishan as NAW-3. Parties also produced relevant documentary evidence.

After hearing the parties and examining the evidence on record, learned Judge of the Tribunal came to the conclusion that the accident did not occur for any rash and negligent

driving of the bus in question but occurred for the deceased falling down while attempting to board the moving bus by climbing upon its tyre when the bus was being taken to its parking place; and came beneath for his own mistake. In view of the finding on this fundamental fact against the claimants that the accident occurred for negligence of the deceased himself, the learned Judge held the claimants disentitled for any compensation and proceeded to reject the claim application altogether. Hence this appeal.

Learned counsel Mr.Roshan Lal appearing for the appellants has strenuously contended with reference to the evidence on record that it is clearly established that the accident occurred for omission of reasonable care and caution on the part of the respondent-RSRTC. Learned counsel submitted that the statements made by the witnesses of the non-applicants carry several contradictions and are not trustworthy; and from the evidence of NAW-2 Hadwanata Ram Choudhay and site inspection report Ex.A/5, it is borne out that Deepa Ram died because of negligence of the bus driver. Per contra, learned counsel Mr.Sangeet Lodha appearing for RSRTC has supported the impugned award with the submissions that the accident occurred solely for the negligence of the deceased himself who attempted to enter the moving bus through its window and the Tribunal has not

erred in exonerating the respondents in this case.

During the course of submissions, noticing a fact mentioned in the site inspection memo (Ex.A/5) prepared on the very date of incident that the driver had already taken the bus on its route this court expressed reservations about adopting of such a course by RSRTC where despite such an occurrence, even before taking up of necessary proceedings by the police, the vehicle and the driver were removed from the scene. Learned counsel Mr.Lodha after taking instructions expressed regrets on behalf of the respondents and submitted that in view of the passenger pressure on the eve of Deepawali festival and non-availability of other vehicle, the driver was sent on the route with the vehicle in question after the accident had been reported to the police and in the larger interest of public.

Having scanned through the entire record and having given thoughtful consideration to the entire matter, this Court is clearly of opinion that the impugned award by the Tribunal and rejection of the claim application altogether cannot be sustained.

The fact that Deepa Ram sustained injuries, which ultimately proved fatal, for coming under the wheels of the bus in question on 03.11.1991 at 3.00 p.m. at Tilak Bus Stand, Barmer is not in dispute. It has been suggested on the part of

the non-applicants, particularly by the driver, NAW-1 Shob Singh, that the vehicle was locked from inside and he was taking it in reverse to park the same at its appointed place at the bus stand and several people attempted to board the bus through the windows from the side opposite to that of the driver. Even if this suggestion is accepted on its face value, this Court is clearly of opinion that the respondent RSRTC cannot be absolved of its liability of taking care and ensuring safety of the passengers at their bus stand.

In view of the hazards inherent with driving of a motor vehicle; and in this case, in view of substantial number of passengers having crowded the bus stand on Deepawali eve, it was definitely required of the respondent State Road Transport Corporation to have taken extra care to control the movement of their vehicles and to manage the crowd so as to ensure safety of the passengers.

With reference to the principles enunciated by the Hon'ble Apex Court in the case of S. Kaushnuma Begum & Ors. Vs. New India Assurance Co. Ltd.: AIR 2001 SC 485, on the strict liability rule developed in Rylands Vs. Fletcher [1861-73 All ER (reprint) 1], this Court in the case of Ali Khan Vs.Vijay Singh: 2006 RAR 102 has pointed out,-

> "It is, therefore, apparent that the principles emanating from the case of Rylands Vs. Fletcher of strict liability of the person using anything which could be classified as dangerous thing have been adopted to consider liability in torts if an injury is caused because of such use. The motor vehicles, vis-a-vis the human beings and their property, obviously answer to the description of 'dangerous thing' for the purpose of strict liability rule. Once the strict liability rule is applied, the other species of liability i.e. negligence, ceases to be the prime basis of cause of action and, instead, a person is responsible even for accidental harm even though he is not guilty of either wrongful intent or negligence. These are the cases where the defendant has a duty of "ensuring safety" to the others."

Mere assertion on the part of the respondents that there was no negligence on the part of the driver of the vehicle cannot be taken sufficient to absolve the Corporation of its liability, as assumed by the learned Tribunal. In the case of Ali Khan (supra) this court has pointed out,-

> "A cause to maintain a claim for compensation arises not merely for rash and negligent driving of a motor vehicle but it arises out of the use of motor vehicle. Driving is one of the uses of motor vehicle and even if the act of driving itself is performed by the driver with all skill and caution, yet if the use of vehicle causes injury to a person or damage to a property, it cannot be said that merely because there was no fault in driving, no cause for compensation arises.
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> The Hon'ble Supreme Court in Kaushnuma Begum's case (supra) has summed up the principle governing such cases thus,-

> “11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action.”

The Tribunal has been in error in assuming that because the deceased was attempting to board the moving bus through its window he alone was to be blamed and hence the claim application was required to be rejected. The Tribunal has omitted to consider that in the present case, the non-applicants have utterly failed in their duty towards the victim and related with the vehicle in question.

The statement of the driver NAW-1 Shobh Singh makes it clear that he was taking the bus in reverse in the thick of passenger crowd without having any help available with him in the form of khalasi or conductor. The driver Shobh Singh has precisely stated that,-

> "यह बात सही हैं कि जब गाड़ी बैक लेते हैं तब क्लीनर साथ नहीं होता, कन्डेक्टर साथ होता हैं, परन्तु उस दिन कन्डेक्टर भी साथ नही था।"

That the persons were attempting to enter the closed bus through windows was also a fact in the knowledge of the driver who has stated,

> "गाड़ी का दरवाजा लोक किया हुआ था, गाड़ी को बेक लेते वक्त खिडकियो से लोग अन्दर चढने की कोशिश कर रहे थे ।"

NAW-2 Hawanta Ram Choudhary the depot incharge has stated that he was present at the bus stand for the purpose of controlling the traffic on the occasion of Deepawali festival thus,-

> "दीपावली के अवसर पर यातायात नियंत्रण करने के लिए मैं बस स्टेण्ड पर मौजूद था ।"

And again,-

> "दीपावली के अवसर पर कुछ भीड़ थी, इसलिए मै स्वयं नियंत्रण हेतू बस स्टेण्ड पर खड़ा था ।"

He has also pointed out that he was standing 20 ft. away from the bus and according to his statement, it was in his knowledge that the bus was being taken in reverse without the conductor and he had seen the deceased trying to board the bus through window. However, he has not stated any attempt made by him to control the traffic and to ward against mishap. The apathy and total unconcerned attitude towards the traveling public on the part of the respondent RSRTC is telling

on the face of the record where the driver of the bus was taking it in reverse in the thick of crowd without any helping hand to guide on the side; and where the depot in-charge, supposedly standing at the site for the purpose of contolling traffic remained only a spectator; neither guiding the vehicle nor managing the crowd. It is left only to imagination as to what meaning has been assigned by RSRTC to the phrase 'traffic control' at its bus stand?

It is apparent after examining the evidence of the relevant witnesses produced by the non-applicants that they had omitted to take reasonable care and caution to guard against the incident and they cannot be totally absolved of their liability arising due to omission to ensure safety of public.

A fact is required to be noticed that the driver Shobh Singh has stated that he found the deceased lying near the rear wheel of the bus as he came down on rising of clamour by the people. Admittedly, the deceased was crushed under the left hand side front wheel of the bus while it was moving in reverse, i.e. running backwards. In that scenario, it was practically impossible for the deceased being found at or near the rear wheel of the bus because when the bus was in the process of being taken in the reverse and the deceased was crushed beneath the front wheel, and if the bus was immediately brought to halt, in the normal circumstances his

body ought to have been found near the front of the bus and not towards its back side.

Site inspection report Ex.A/5 prepared on the very day of incident shows that the place of incident is bit away from the platform for parking the bus but then it has been pointed out that the bus driver had taken the bus to its route and only tyre marks were available. It was improper on the part of the bus driver to have removed the bus after the incident has happened. Until requisite investigation was made, it was also indiscreet on the part of the Depot Manager to have permitted the driver to take away the bus from the scene of incident. However, this being an old matter pertaining to the year 1991 and investigating agency having also not taken care to raise question about the unauthorised removing of the vehicle and of the driver; and in view of the submissions made by learned counsel Mr.Lodha expressing regrets on behalf of the respondents and with the hope that the respondent-RSRTC would adhere to the requirements of law and would not attempt to interfere with the scene of incident or remove the persons and the things related with the incident except as sanctioned by law, this Court would not take up the proposition of proceeding further against the erring persons; but this much is certain from perusal of the site inspection memo Ex.A/5 that for the removal of the bus from the scene of incident, the

respondent-RSRTC interfered with the evidence directly available at the site and an adverse inference is definitely required to be drawn against them.

A cumulative effect of the evidence produced on record and drawing of an adverse inference against the respondent-RSRTC is that responsibility of the respondent-RSRTC towards incident remains undeniable.

However, the fact remains that the deceased attempted to enter the bus that was in the process of moving backwards to the platform. It has been stated by Khem Ram AW-2 cousin of deceased and the person said to be available at that site that,-

> "उस दिन बस में चढने के लिए बहुत भीड़ थी। बस में सीट रोकने के लिए भीड़ बस में चढने की कोशिश कर रही थी, दीपाराम भी बस में चढ़ने की कोशिश कर रहा था । दीपाराम के बस की हत्थी पकड़ी हुई थी, भीड़ ज्यादा थी इसलिए हत्थी छुट गयी और दीपाराम नीचे गिर गया ।"

It has been admitted by Khema Ram that the deceased was crushed by front wheel of the bus although he has stated that to be the right hand side wheel. There seems to be some mistake on the part of the said witness Khema Ram regarding the notion about the side because it is an admitted position that deceased was crushed by the front wheel of the bus in question at the side opposite to that of the driver. Be that as it may, this Court is of opinion that if the deceased would have fallen down while attempting to board the bus that was

stationary, there would not have been any question of his being crushed by the wheels of the bus and he would have sustained only the injuries as a result of falling and not as a result of the crushing. Attempting to board a moving bus that was being taken in reverse definitely shows that deceased was also a contributory to the incident and in the overall circumstances of the case, this Court is of opinion that the respondents cannot be held liable beyond 50% contributory negligence on their part in bringing about the incident by omission to take reasonable care. The respondents, therefore, remain liable to compensation to that extent of 50% of the loss caused to the claimants.

The findings on issue No.1 as recorded by the Tribunal cannot be sustained and is, therefore, set aside and the respondents are held liable for compensation to the extent of 50% of the loss suffered by the claimants.

The Tribunal in this case, after concluding issue No. 1 against the appellants has chosen to decide issue No. 3 relating to quantum of compensation too while reiterating its findings that the victim was solely responsible for the accident and hence the claimants were not entitled for any compensation; and has not taken up quantification of compensation. However, having regard to the fact that the present one is an old matter pertaining to the accident of the

year 1991, it is considered appropriate to finally decide the matter at this stage itself instead of relegating the parties to the Tribunal for the purpose of quantification of compensation.

It is clearly established on record that the deceased was working as teacher with Education Department earning salary income of Rs.1,903/- per month. It has been feebly suggested on the part of the respondents that Deepa Ram fraudulently entered the service under a fake degree and after enquiry his services were terminated and learned counsel attempted to refer to certain unexhibited documents including an order dated 10.04.1992 placed on record in relation to the removal of Deepa Ram from service. This Court is clearly of opinion that firstly the unexhibited documents cannot be considered in proof of any particular fact and secondly such order dated 10.04.1992 has obviously been issued after the demise of Deepa Ram without opportunity of hearing to him or his heirs. In any case, it cannot be denied that at the time of his death, Deepa Ram was in service as a teacher. Pecuniary loss deserves to be assessed on the basis of his income as established on record; and in view of his age, a reasonable component of future prospects also deserves to be considered for the claimants.

The claimants are parents of the deceased and were in the age group of about 48-50 years at the time of incident. In

the overall circumstances, this Court is of opinion that future prospects at least 1.5 times the last drawn salary of the deceased deserve to be considered in this case. In this view of the matter, the average earning of the deceased could reasonably be adopted at Rs.2,850/- per month leading to annual income of Rs.34,200/-. Having regard to the facts and circumstances of the case, where the claimants are the parents of the deceased, looking to the future certainties as well as uncertainties, the deceased getting marriage in future and larger part of his income getting diverted to his own family cannot be ruled out and, therefore, loss of contribution to the claimants could be considered only at about 50% of his estimated income leading to a multiplicand of Rs.17,100/- per annum.

In the overall circumstances of the case, this Court is of opinion that interest of justice shall be served if the multiplicand so taken is capitalized by a multiplier of 11 that leads to a figure of pecuniary loss at Rs.1,88,100/- (Rs.17,100/- x 11). The claimants are further allowed Rs.10,000/- towards loss of services of their son and another Rs.1,900/- towards funeral expenses, leading to total loss at Rs.2,00,000/- (Rs.1,88,100/- + Rs.10,000/- + Rs.1,900). In view of the contributory negligence of the deceased at 50%, the claimants are held entitled for compensation in this case

in the sum of Rs.1,00,000/-.

The incident occurred as back as on 03.11.1991 and the claim application was rejected by the Tribunal on 03.06.1994. If the award of compensation were made at the relevant time, the claimants would have been allowed interest in the range of about 12% per annum then in vogue. Having regard to the facts of the case and the quantum of compensation, this Court is of opinion that interest of justice shall be served if the claimants are allowed interest at the rate of 9% per annum.

As a result of the discussion aforesaid, this appeal succeeds and is allowed. The claimants are awarded compensation in the sum of Rs.1,00,000/- together with interest at the rate of 9% per annum from the date of filing of claim application.

The amount payable under the award shall be deposited by the RSRTC within 30 days from today with the Tribunal and the Tribunal shall proceed with apportionment and disbursement in the manner that each of claimants shall be allowed equal amount under the award. Half of the amount for each of the claimants be placed in a Monthly Income Scheme of Post Office for a period of five years and the claimants shall be entitled to receive periodical interest thereupon. Other half may be paid cash to the respective

claimants. The claimants-appellants shall also be paid costs of this litigation by the respondent-RSRTC quantified at Rs.3,300/-.

(DINESH MAHESHWARI),J.

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